

LAW AND THE ART WORLD

Pay attention to matters of due diligence

By Bill Frazier ©2014

As I was preparing to write this article, I read in the newspaper about a prominent art gallery that was burglarized of many thousands of dollars of jewelry and other small items. This prompts me to remind galleries and artists to make sure that they have adequate insurance coverage for their inventory.

In some states, galleries, auction companies and shows are liable for the value of consigned work that is stolen, mysteriously disappears, or is otherwise lost. This would include burglaries and even the taking of bad checks.

In Montana, for example, this liability is virtually absolute, and an artist cannot waive this coverage, nor may a gallery or show refuse it. The practice of some galleries of seeking such a waiver, if not actually illegal, is void. The artist cannot waive, or be required to waive this liability protection. Even if the artist does sign a waiver for the liability protection (some galleries and shows have just such a form for artists to sign) the waiver is invalid.

However, not all states provide this protection, so it is important for the artist to take care about signing such waiver documents. Some shows and galleries routinely submit such forms with invitations to their shows, and in many cases, the artist will routinely sign the waiver, also called a release, without understanding what it means. Understanding these things is part of the due diligence of being a professional in the art business world.

This same caution applies in another situation I have mentioned many times in this column. This is the practice of many artists placing their work in coffeehouses, cafes and restaurants where there is the hazard of smoke and grease damage. Lest you doubt this, look at a piece of art work that has hung in a café for a few months and you will be surprised at how grimy it is. This is even worse for a piece under glass, which often is ruined. Many galleries will not take a piece if it has previously hung in such an environment.

Adequate insurance coverage

Galleries should always have their work on consignment insured. For the artist, this consideration should be non-negotiable. A

roof cave-in from heavy snow pack can cause catastrophic water damage to the art work within. Fire and smoke or steam damage could destroy much of an artist's annual production, and I have seen that happen.

There must be adequate insurance coverage. It is the responsibility of the consigning artist to satisfy himself that such coverage is in place.

Keep in mind, as well, that theft, while uncommon in most galleries, does occur. Usually, it is confined to small items, as in the example at the beginning of this article, but large pieces and sculptures have disappeared, also.

I am reminded of a theft at a sporting goods store. Two kids stole a canoe from the store. All of the witnesses to the canoe leaving the store assumed that the two boys carrying it out over their heads had paid for it. A clerk even opened the door for them! They were caught two weeks later when they returned and tried to shoplift two paddles. Assumptions are dangerous, even in art galleries.

By now, artists should also know that there should be insurance coverage on their artwork when it is being shipped. Although carriers such as UPS and FedEx do provide some coverage, insurance for artwork, at correct values, must be specified.

To summarize, artists should have insurance on their work; galleries should have insurance on their consigned inventory; and art shows and art auctions, charitable or otherwise, should have insurance protecting the artwork and the artists' interest in the work.

Matters of due diligence

The concept of due diligence, when applied to the art world and art business, is just as important as when applied to real estate purchases, car purchases or any other business endeavors. While we like to think of art in more altruistic terms, it is a business in which artists, gallery owners, auctioneers and many others make their livings.

Due diligence applies to contracts between artists and galleries or any other organization. Read and understand the terms of the contract. If you do not understand a term or provision, go over it with a lawyer. It may cost a couple hundred dollars, but that is cheaper than losing



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your artwork or not getting paid.

Just because you are presented with a pre-printed agreement does not mean you have to accept it without further negotiation. All contracts are subject to negotiation until they are finally agreed to by both sides and signed. Then the contract is complete and binding.

Do not ever accept or sign "take it or leave it" contracts. These will not in any way benefit you as an artist. Beware of anyone offering a "take it or leave it" agreement. This will guarantee discord and trouble.

Avoid any person coming to you with such a contract. Sometimes called "contracts of adhesion," they always favor the presenting side, are designed to intimidate, and should be rejected. This same advice applies to any type of contract that says that it is "not subject to negotiation," whether related to art business or not. I would go a step further here and suggest that you not get involved at all with anyone approaching you with such a proposed agreement.

Tax changes

Finally, talk to your accountants about tax changes for 2015 and thereafter. Although the details had not yet been revealed at the writing of this column, I have been informed that there are changes in tax rates, deductions, exemptions and other matters that we have come to take for granted. Stay tuned.

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Fundraising via crowdfunding: Five best sites for nonprofits

In the nonprofit world today, all the buzz is about crowdfunding.

This process has hit \$5 billion annually, according to *Forbes*, and nearly one-third of this amount is for charities.

Where to start?

Consider crowdfunding as a viable option at your organization.

Here are five sites that support crowdfunding for nonprofits and charities:

- **Indiegogo.** This site offers a broad approach and flexibility, and approves donation-based fundraising campaigns for charities.

- **RocketHub.** RocketHub fuels donation-based campaigns for creative projects. It also helps partners collaborate.

- **Crowdrise.** This site is the place to go for nonprofits and causes. It even tracks how much of an impact nonprofits and members make using a points system.

- **Invested.in.** Launch your own customized crowdfunding platform for your organization using this site.

- **FirstGiving.** This site has been used by well-known organizations like Habitat for Humanity, Big Brothers Big Sisters and The Humane Society.

– Info: is.gd/CFundingSites

Tech Talk: Is there competition for Facebook?

By Mark Ratledge

In the last issue I covered some of the backlash against Facebook and the reasons why some users are quitting: privacy concerns, security and selling of their information, as well as simply a lack of time to deal with all the "input" of social media.

But what if you want to quit Facebook but still like the idea of social networks? Maybe you want to use social networking privately with family? And is there a social network that doesn't mine your personal information or dump ads on you?

There are a few alternatives to Facebook around the web. In 2010, an alternative to Facebook called Diaspora tried to get a start. It was going to be a social network that guaranteed privacy and security.

Diaspora is what's called a "distributed" network; users and their data were not in one central location, and as a result couldn't be gathered and used. And the code was "open source," so many developers could read it and be sure of the security. Diaspora went through several transformations, and while it still exists, it's not easy to use.

But now there's Ello, a social network that got off the ground last year. It's still in

"invitation" mode, but last fall, it's said that 30,000 people per hour were signing up. The site is simple and mostly black and white (except for user images and posts), not as cluttered with ads and sharing options like Facebook. Design-wise, Ello seeks to attract the under 30 crowd.

On the FAQ (Frequently Asked Questions) page, Ello's founders say that the service "was founded by a small group of artists and programmers who had become disillusioned by all the big social networks, which had become ugly, cluttered, and full of advertisements. They just weren't any fun any more. So we decided to build our own." (Read more at <https://ello.co/wtf/post/faq>)

Ello says "No ads, ever." And, to remain ad-free, Ello converted to a Public Benefit Corporation (PBC), which is new class of for-profit company that was created to show a benefit for society and not simply to make money for investors.



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Some tech news websites say that Ello already is a "has been" because it takes a critical mass to gain users, have them post, make friends and, more importantly, stick around. And they don't see the necessary numbers for Ello, even with its growth.

Will Ello make it? It's growing fast. But can it keep growing and keep the lights on? Is Ello a Facebook killer?

I don't think it wants to be. But Ello took venture capital funding, so now it needs to make money, right? Ello's creators say they can make money with premium features and still not sell ads and your personal information; I guess that will remain to be seen.

You can check out Ello yourself and ask for an invitation at <https://ello.co>. I searched, and there are a few Montanans on board.